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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 979

FRED W. PHELPS,
Petitioner,

vs.

STATE BOARD OF LAW EXAMINERS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Petitioner seeks a writ of certiorari to review the judgment and order of the Supreme Court of Kansas suspending him from the practice of law for two years, entered on September 24, 1969.

OPINION BELOW

The opinion of the Supreme Court of Kansas is reported at 204 Kan. ..... (1969) and is set forth in the appendix to the petition, pages 6-21.

JURISDICTION

Petitioner seeks to have this Court take jurisdiction under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Does petitioner's claim that the State Supreme Court violated its own customary procedures and that it violated a Kansas statute raise a question under the fourteenth amendment?

2. Does the petitioner's claim that the State Supreme Court erroneously decided that petitioner violated the Canons of Ethics raise a question under the fourteenth amendment?

STATEMENT OF THE CASE

On September 14, 1967, the State Board of Law Examiners instituted disbarment proceedings against the petitioner in the Supreme Court of Kansas. Following its custom in such cases, the court appointed a private practicing lawyer as commissioner to hear the evidence with regard to the seven-count accusation. The commissioner did so and made his report, finding generally against the Board. The Board took exception to his report with regard to four of the seven counts. Thereafter argument was had to the supreme court and on September 24, 1969, the court filed its opinion ordering the petitioner suspended from the practice of law for two years. In so doing, the court reached conclusions contrary to those of the commissioner on three of the four counts to which exception was taken.

The facts as to all four counts to which exception was taken (I, III, IV, and V) are set out in the Board's brief filed in the court below, at pp. 94-101.

REASONS CERTIORARI SHOULD BE DENIED

The Petition Raises Matters of State Law Only, Over Which This Court Has No Jurisdiction.

The respondent has no quarrel with the statement quoted by petitioner from *Schware* v. *Board of Bar Examiners of New Mexico*, 353 U.S. 232, 238 (1957) that "a state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clause of the fourteenth amendment," and that "certainly the practice of law is not a matter of the state's grace." However, the rather brief petition filed in this case contains no claims whatsoever except that errors of state law were committed by the court below. Petitioner claims that the court violated its own announced rules of evidence, appeal, and error and also the express language of Kansas Statutes Annotated 7-114 (petition, p. 3). These claims are dubious at best, since this was an original proceeding in the Supreme Court of Kansas in which that court was the decider of the facts as well as the law. No appeal was involved. The court's opinion indicates that it followed its long-standing rule that the commissioner's findings and conclusions are advisory only and are not binding and that it has a duty to examine the record independently to determine what judgment should be rendered.

But whether the state court's decision was right or wrong in refusing to follow the commissioner's recommendations, this was a decision of Kansas law and involves no violation of federal right.

The same may be said of petitioner's complaints that the state court erred in holding that he could not ethically appear as a judgment creditor in a bankruptcy court under

the circumstances described in count three; and that he could not ethically retain counsel to sue a former client upon a written contract under the circumstances described in count four. Whether the petitioner's actions violated his ethical obligations to his clients in those two instances are purely questions of Kansas law.

Petitioner claims that the decision of the court below violated his rights under the due process and equal protection clauses of the fourteenth amendment. He does not say in what way the decision did this, except for the assertions mentioned above. Apparently he believes that these alleged errors of state law also constitute federal constitutional violations. However, this is not the case. *Snowden* v. *Hughes*, 321 U.S. 1 (1944).

CONCLUSION

The petition raises questions of state law only over which this court has no jurisdiction. For this reason the writ of certiorari should be denied.

Respectfully submitted,

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